Santa Barbara Humane Society for the Prevention of Cruelty to Animals *and* United Food and Commercial Workers Union, Local 1036. Case 1–CA–16963

April 30, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS CRACRAFT AND OVIATT

On October 17, 1990, Administrative Law Judge Clifford H. Anderson issued the attached decision. The Respondent filed exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Santa Barbara Humane Society for the Prevention of Cruelty to Animals, Santa Barbara, California, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent reiterates in its exceptions the argument, rejected by the judge, that the exclusion of the unit employees from voting on the merger of Local 899 and Local 137 because Local 899 had not yet been certified as representing the unit, invalidated the merger of the locals as to the unit employees. In adopting the judge's rejection of this argument, we rely on *Potters' Medical Center*, 289 NLRB 201 (1988).

The Respondent also reiterates the argument, rejected by the judge, that the Union did not make a proper bargaining demand because it failed to identify itself as the successor to the certified bargaining representative. We find that any doubt the Respondent could have had on that score was removed when the complaint issued alleging that the Union was formed as a result of a valid merger between the certified bargaining representative and another local union, that at all material times the Union has been the exclusive bargaining representative of certain of the Respondent's employees, and that the Respondent is obligated to recognize and bargain with it. See *East Texas Steel Castings Co.*, 191 NLRB 113 (1971), enfd. 457 F.2d 879 (5th Cir. 1972).

Bernard T. Hopkins, Esq., counsel for the General Counsel.
Donna L. Lewis and *Stanford B. Ring, Attys. (Akin, Gump, Strauss, Hauer & Feld)*, of Washington, D.C., for the Respondent.
James Rutkowski and *Victor Manrique, Esqs. (Van Bourg, Weinberg, Roger & Rosenfeld)*, of Los Angeles, California, for the Charging Party.

DECISION

STATEMENT OF THE CASE

CLIFFORD H. ANDERSON, Administrative Law Judge. This case was submitted by means of an all-party stipulation of facts in lieu of hearing filed on July 19, 1990. Pursuant to the stipulation a due date for the submission of briefs was established. Timely briefs were received from the General Counsel and Respondent. The case arose pursuant to a complaint and notice of hearing issued on March 4, 1988, by the Regional Director for Region 31 based on a charge docketed as Case 31–CA–16963 filed by United Food and Commercial Workers Union, Local 1036 (Local 1036) on January 20, 1988, against the Santa Barbara Humane Society for the Prevention of Cruelty to Animals (Respondent).

The complaint alleges that Local 1036, as a result of a valid merger between Food and Commercial Workers Locals 899 and 137 (Local 899 and Local 137, respectively), at material times has been the exclusive representative of certain of Respondent's employees, that Local 1036 at various times in June through December 1987 sought recognition, bargaining, and various information relevant to unit representation and bargaining from Respondent, and that Respondent has at no time recognized, bargained with, or supplied information to Local 1036. Such conduct, avers the General Counsel, violates Section 8(a)(5) and (1) of the National Labor Relations Act (Act).

Respondent does not deny the conduct attributed to it but rather asserts two defenses. First, Respondent challenges the Board's jurisdiction over it. Second, Respondent denies the validity of the merger of Locals 899 and 137 and therefore contends that Local 1036 has never represented Respondent's employees. Accordingly, Respondent denies that it has in any way violated the Act.

On the entire record herein,[1] including briefs from the General Counsel and Respondent, I make the following

FINDINGS OF FACT

I. JURISDICTION

A. *Stipulated Facts*

Respondent is now, and has been at all times material, a not-for-profit charitable corporation duly organized under and existing by virtue of the laws of the State of California, with an office and principal place of business located in Santa Barbara, California. By the terms of its incorporation, Respondent was formed for the purpose of preventing cruelty to animals through the enforcement of animal protective statutes on behalf of the City and County of Santa Barbara. To that end Respondent has in its employ state humane officers who are armed, badged and uniformed peace officers of the State of California. As an adjunct to its responsibility for enforcing animal protective statutes and as a service to its members, Respondent operates an animal shelter.

In the course and conduct of its business operations during the calendar year ending immediately prior to the filing of the charge herein, Respondent purchased and received services (utility and phone services) valued in excess of $24,000 directly from sellers or suppliers located within the State of California, which sellers or suppliers themselves met one of the Board's jurisdictional standards. In the course and conduct of its business operations during the calendar year ending immediately prior to the filing of the charge herein, Respondent derived gross revenues in excess of $500,000 for services provided to the community and to the members of the Society.

[1] All parties expressly waived all rights to a hearing or to introduction of evidence beyond the Stipulation of Facts and its included material.

B. *Arguments of the Parties*

Respondent argues that the Board lacks jurisdiction over Respondent on the grounds that (i) Respondent is a political subdivision of the State of California, and (ii) the Board's assertion of jurisdiction over not-for-profit charitable organizations such as Respondent would not further the stated objectives of the Act.

The General Counsel argues that the Board has specifically held that it has jurisdiction over Respondent in Case 31–RC–5867 most recently in an unpublished Order by a three-member panel, Chairman Dotson dissenting, dated September 24, 1987, denying Respondent's Request for Review of the Acting Regional Director's Second Supplemental Decision and Certification of Representative.

C. *Findings and Conclusion*

The Board has squarely ruled on the question presented. No party contends new or different factual circumstances have arisen. In such circumstances, an administrative law judge is bound to apply current unambiguous law.[2] The September 24, 1987 Order of the Board, irrespective of the existence of a dissent on the issue in controversy, controls the instant case and commands that I reach the same result. Accordingly, I find Respondent at all times material is and has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. LABOR ORGANIZATION

At all times material until on or about December 10, 1986, Local 899 and Local 137, and each of them, were labor organizations within the meaning of Section 2(5) of the Act. At all times since on or about December 10, 1986, Local 1036 has been a labor organization within the meaning of Section 2(5) of the Act.

III. ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

On April 2, 1985, United Food and Commercial Workers Local 899 filed a representation petition docketed as Case 31–RC–5867 with Region 31 of the National Labor Relations Board (Board) seeking to represent certain employees of Respondent. Following various procedural steps, on May 19, 1987,[3] Local 899 was certified as the exclusive representative of Respondent's employees in the following unit (the unit):

> All regular full-time and regular part-time employees employed at [Respondent's facilities in] Santa Barbara, California including office clericals, kennel persons, veterinary assistants, educators, maintenance persons, and state humane officers; excluding guards and supervisors as defined in the National Labor Relations Act, confidential employees and licensed doctors of veterinary medicine.

On June 2, 1987, Respondent filed a Request for Review of this certification, which request was denied by the Board on September 24, 1987.

On or about December 10, 1986, Local 137 and Local 899 merged to form Local 1036. Commencing on or about June 4, 1987, and thereafter on October 7 and December 24, 1987, Local 1036 requested and is requesting Respondent to bargaining collectively with respect to rates of pay, wages, hours of employment, and other terms and conditions of employment as the exclusive collective-bargaining representative of all the employees of Respondent in the unit. Further, on June 4, 1987, Local 1036 requested Respondent furnish it with the following information, all of which under conventional Board doctrine is necessary for, and relevant to, a labor organization's performance of its function as an exclusive representative of employees for collective bargaining:

> 1) List of current employees in the unit.
> 2) Present job classification of each person listed.
> 3) Present salary or wage level of each person listed.
> 4) Length of service of each person listed.
> 5) Complete mailing address of each person listed.
> 6) Benefit plan description of any existing medical, dental, vision care, prescription or similar benefits.
> 7) Current employee handbook or similar document(s) which delineate work rules, policies, benefits, etc.

In demanding recognition and requesting the above information from Respondent, Local 1036 neither identified itself as, nor purported to be, the successor to Local 899. Rather, Local 1036 claimed to be ''the certified bargaining representative'' of Respondent's employees.

At all times since October 14, 1987, Respondent has refused: (i) to recognize Local 1036 as the exclusive representative of unit employees, (ii) to bargain collectively with Local 1036 as the exclusive representative of unit employees, and (iii) to provide Local 1036 with the information requested on June 4, 1987, as set forth above.

B. *The Legal Consequences of the Merger*

1. The narrow issue presented

There is no dispute that, if Local 1036 does not represent unit employees, Respondent has not violated the Act and the complaint should be dismissed. Conversely, there is no dispute,[4] setting aside the jurisdictional issue decided supra, that, were Local 1036 the exclusive representative of unit employees at relevant times, then Respondent was obligated

[2] *A. S. Horner, Inc.*, 246 NLRB 393 (1979); *Fremont Mfg. Co.*, 255 NLRB 818 (1981); *Wickes Furniture*, 261 NLRB 1062 (1982); *Dependable Tile Co.*, 268 NLRB 1149 (1984).

[3] The stipulation of facts incorrectly dates this certification in March, the document in the Appendix bears the noted date.

[4] I do not find the fact that Local 1036 demanded recognition, bargaining and information about unit employees as their exclusive representative from Respondent without stating it was a successor to Local 899 is sufficient to defeat or diminish Local 1036's representational rights, if they existed, or Respondent's obligations in that context. At the very least Respondent was put to a duty to inquire respecting Local 1036's assertions coming soon after the issuance of the Certification of Representative by the Regional Director and just 2 days after Respondent filed a request for review of that certification. Having failed to do so, Respondent placed itself in the same position as if it had inquired of Local 1036 what its basis for demanding recognition was or had attempted to contact Local 899 respecting the matter. In either event Respondent would soon have learned of the merger and Local 1036's assertions of representational status arising out of it. Thus, I find the language of Local 1036's demand for recognition upon Respondent is not a basis for a defense to a violation of Sec. 8(a)(5) and (1) of the Act, if in fact Local 1036 is found to represent the unit at relevant times.

to recognize, bargain with and supply the requested information to Local 1036. Further, Respondent's failure and refusal to take such actions would violate Section 8(a)(5) and (1) of the Act.

There is no dispute that the only theory under which Local 1036 represents Respondent's unit employees is one of union successorship. Thus Local 1036 is the exclusive representative of unit employees, if and only if, as a result of the December 10, 1986 merger of Locals 899 and 137, it succeeded to the rights and obligations Local 899 obtained when certified by the Regional Director on May 19, 1987, as the exclusive representative of unit employees. I find that this issue turns exclusively on the validity and effect of the merger of the Locals under Board and court doctrine. The unusual sequence of the instant events, i.e., that the representation election among Respondent's employees underlying the certification was conducted in June 1985, that the union merger occurred in December 1986 and that the certification of Local 899 issued in March 1987, does not in my view control or significantly modify the narrow issue presented. If the merger meets Board standards, Local 1036 obtained all rights created by the March 1987 certification and Respondent was obligated to recognize and bargaining with it. If the merger was invalid, Local 1036 obtained no rights under Local 899's certification and Respondent has no obligations to Local 1036. It is appropriate therefore to turn to the facts and issues respecting the merger.

2. Stipulated facts[5]

a. *Premerger meeting events*

In anticipation of a merger between Local 899 and Local 137, Local 899 mailed a merger notice dated November 3, 1986, to its members advising them in relevant part that the ''Executive Board is finalizing a merger proposal which you will have an opportunity to review and vote upon at the special called [sic] meetings as set forth below.'' The meetings ''as set forth below'' were scheduled to take place between November 19 and 25 at various locations within Local 899's geographic jurisdiction. Although Local 899 was seeking to become the exclusive bargaining representative of Respondent's employees, Local 899 did not mail the November 3 notice of the proposed merger to Respondent's employees: Local 899 had not at that point accepted any of Respondent's employees for membership in the Union, so none of Respondent's employees were eligible to vote in the merger elections.

In addition to mailing the November 3 letter to members, Local 899 provided a copy of the letter for posting to every employer with whom Local 899 had a collective-bargaining agreement. However, because Local 899 had no bargaining agreement with Respondent, Local 899 did not provide Respondent with a copy of the November 3 letter for posting at Respondent's facility.

Shortly after the November 3 letter, Local 899 published in the Local 899 newspaper a notice dated November 11, 1986,[6] to members announcing that the executive board of Local 899 voted unanimously in favor of merging with Local 137 ''to make a new Union, UFCW 1036'' and advising the members of six scheduled ''voting meetings'' regarding the merger. Because Local 899 has not accepted any of Respondent's employees for membership in the union, Local 899 neither mailed nor otherwise made available to Respondent's employees the issue of the Local 899 newspaper containing the November 11 notice.

As an adjunct to the November 11 notice, Local 899 also published in the Local 899 newspaper a copy of a Merger Agreement dated November 17, 1986, between Local 899 and Local 137. Again, Local 899 did not provide Respondent's employees with or otherwise make available to them a copy of the November 17 Merger Agreement.

By communication dated November 11 and 12, 1986, respectively, Local 899 and Local 137 announced to their separate membership the endorsement of a merger agreement by which the two local unions would establish a consolidated entity to be known as United Food and Commercial Workers Local 1036. The notice to members was contained in a newspaper of Local 899 which was mailed to all members and in a letter sent to all Local 137 members. The notices contained copies of the proposed merger agreement and a schedule of merger meetings. Local 899 had scheduled six meetings between November 19 and 25, 1986, in various locations within its geographic jurisdiction. Local 137 had scheduled seven such meetings to be held between December 1 and 3, 1986. In addition, Local 899 posted in all stores where the employer was signatory to a union contract an earlier letter to all its members which also contained the dates, times and places of the six merger meetings.

Paragraph 27 of the Merger Agreement provides in part:

> This Agreement shall be submitted to a vote of the general membership of UFCW 899 and the UFCW Local 137 according to the provisions of their respective Bylaws and the UFCW International Union's Constitution.

The International constitution provides that the International executive board shall have the power, inter alia, to authorize voluntary mergers and prescribe the conditions under which such mergers shall be effectuated. The bylaws of Locals 899 and 137 contain no provision specifically applicable to merger elections. The bylaws of both locals, however, do provide that voters in elections of Local Union officers ''shall be provided an opportunity to vote the ballot in secrecy.''

Appendix A to the Merger Agreement identifies the individuals who will hold office in ''Successor Local Union 1036'' if the merger is approved by the membership. The president of Local 1036 and 14 board members/vice presidents are from Local 137; the secretary-treasurer, recorder and 10 board members/vice presidents are from Local 899.

At the time of the merger vote, Local 899 had about 7000 members; Local 137, about 3000 members.

b. *The voting meetings*

Local 899's six voting meetings were conducted as follows. All persons entering the voting meetings signed a sheet showing that they were members in good standing. David Berry, International vice president and director of region 15, UFCW, presided over the meetings. Barry told members that the reason for the merger was to gain strength. There were many questions from the members. Some meetings lasted 2 hours.

[5] The following recitation of facts is taken virtually verbatim from the Stipulation of Facts, par. 31 et seq.

[6] A typographical error in the stipulation is here corrected.

At the end of each meeting, members were given ballots which they could mark anywhere in the room. They could mark them in a corner of the room so no one could see how they were being marked or they could mark them in front of other members—it was up to the individual member. As they left the meeting, members placed their marked ballots in a ballot box.

Members counted the ballots at the end of each meeting. No one was prohibited from watching the count. The vote count from each previous voting meeting was announced at each successive voting meeting. A ''running'' total was also kept. The final tally was 772 in favor of the merger and 286 against.

Respondent's bargaining unit employees were not involved in the merger vote because they were not members of Local 899.

Mike Sabol, then secretary-treasurer of Local 137, and Mel Rubin, then president of Local 137, conducted seven merger meetings on behalf of Local 137 in the first three days of December 1986. The voting procedures were the same as those described above except that Local 137 used a separate reserved area for balloting. There was no ''open'' marking of ballots. The vote by Local 137 members was 188 in favor and five opposed to the merger.

c. *The postmeeting events*

By letter dated December 4, 1986, to David Barry, International vice president and director of region 15, UFCW, Lee Berns, then president of Local 899, reported that ''Local 899 properly noticed the membership by way of the . . . Local Union newspaper and held secret ballot votes at the meeting[s] and locations posted in the enclosed issue of the News and Views.'' Berns further advised Barry that the ''membership in attendance voted 772 in favor of, and 286 opposed to, the proposed Merger Agreement.'' Berns then requested that Barry favorably recommend the merger to the International executive committee through the International president's office.

Following the merger vote, there was no immediate change in the number or identity of business agents. The two previously existing geographical jurisdictions of the Local Unions became one. There was no chance in the basic organizational structure of the local union. The dues structure and per capita payments remained the same. No members of Local 899 or Local 137 lost bargaining representation as a result of the merger, nor did Local 1036 expressly disclaim representation of Local 899 or Local 137 bargaining units following the merger. Collective-bargaining agreements to which the former Locals were parties continued in effect until their expiration dates at which time they were renegotiated by Local 1036.

3. Analysis and conclusions

a. *Arguments of the parties*

The General Counsel argues that the merger was valid meeting the Board's two-pronged test of procedural due process and of continuity of representation.[7] Respondent attacks the validity of the merger on two grounds. First, Respondent argues that the merger was fatally flawed by the failure to include unit members in the process. Second, Respondent argues that the consideration of the merger and election of officers did not provide adequate assurances of due process. More particularly, Respondent notes: (1) the balloting process was insufficient to insure secret voting, (2) voters were not given the opportunity to separately consider the issue of the merger from the identity of new union officers, and (3) the merger process was not conducted in conformity with applicable International and Local Union governing procedures. These two arguments deserve separate consideration below.

b. *The nonparticipation of unit employees*

It is clear that only union members were involved in the merger process. Unit members, none of whom were members of Local 899,[8] did not participate in any way. Respondent argues that at least two Board cases have held that mergers and/or affiliations are not valid if unit members are excluded from participation citing *Yale Mfg. Co.*, 157 NLRB 597 (1966), and *Rinker Materials Corp.*, 162 NLRB 1688 (1967).

The General Counsel agrees that earlier Board decisions required that all represented employees be allowed to participate in consideration of mergers—union member or not. He argues further, however, that this line of cases was specially rejected by the United States Supreme Court in *NLRB v. Financial Institution Employees*, 475 U.S. 192 (1986), and that the Board has since conformed to the Court's holding. Therefore, argues the General Counsel, since no unit members in the instant case were union members entitled under current doctrine to participate in consideration of the merger as a matter of right, the Locals' limitation of such rights to union members and the unit members' consequential nonparticipation is irrelevant to the validity of the merger. In support of this proposition the General Counsel cites *Action Automotive*, 284 NLRB 251, 252 (1987), a post *Financial Institution Employees* case, holding a merger valid even though, as Judge Harmatz noted:

> In this connection, it is a fact that employees in the bargaining unit were nonmembers and that they, as well as all other represented nonmembers, were precluded from expressing their preference.

Respondent argues that the earlier cases cited were not overruled by *Financial Institution Employees* and control the result herein. Such an argument however does not address the holding in *Action Automotive*, which decision Respondent does not discuss. In agreement with the General Counsel, I find *Action Automotive* persuasive authority for the proposition that the Board does not now require nonmember participation in mergers even where, as here, the entire bargaining unit does not participate in the merger consideration. Accordingly, I reject the argument of Respondent that the lack of participation of unit members renders the merger invalid.

[7] Respondent does not challenge the ''continuity of representative'' aspect of the merger, nor on this record would there be grounds for such a challenge.

[8] It should be noted that the stipulation of facts does not support nor does Respondent argue that Local 899 or Local 1036 excluded any unit member who sought to join Local 899 or Local 1036. Such restrictions invoke differing Board authority, see *Ohio Poly Corp.*, 246 NLRB 104 (1979).

c. *The election process as meeting minimum due process requirements*

Respondent correctly points out that the merger ballot required unitary approval or rejection of both the merger and the slate of local union officers who would hold positions in Local 1036. Further Respondent notes on brief that with respect to the balloting of Local 899.

> [T]he members were not provided a voting booth or a separate voting area in which to mark their ballots in secrecy. Instead, they were forced either to mark their ballot in plain view of union officers and other members or to individually attempt to devise some type of scheme to preclude anyone from observing their ballot.

Respondent also notes that ballots were counted after each meeting and running totals carried forward, thus allowing the earlier meeting voting tallies to influence later meeting voting. Finally Respondent argues that, although the International and Local constitutions and bylaws do not specifically provide for merger elections, they do contain specific provisions and requirements for election of union officers and those provisions were not followed.

Respondent argues these factors rise to a level of unfairness requiring the invalidation of the merger election as inconsistent with minimum due process. While Respondent on brief cites no cases in support of its argument, Counsel for Respondent notes that merger cases present ''serious representation issues'' not present in affiliation votes and argues that Board and court affiliation vote precedent must be viewed with that fact in mind.

The General Counsel emphasizes that the stipulated facts are not inconsistent with minimum due process. More particularly the General Counsel argues the notice of the meetings was reasonable, opportunity for discussion was provided and the balloting presented voters with an opportunity to vote in secret. The General Counsel notes that the Board in *Hammond Publishing*, 286 NLRB 49 (1987), held that the fact that ''some employees voted away from the table provided for voting'' did not invalidate the election where there was no evidence employees observed or knew how others voted. In *NLRB v. Insulfab Plastics*, 789 F.2d 961, 966 (1st Cir. 1986), enfg. 274 NLRB 817 (1985), the court sustained a Board finding of a not improperly conducted union election where, in Chief Judge Campbell's characterization at 916, ''[e]mployees preserved some measure of privacy by turning their backs to the others or by cupping their hands over their ballots.''

Initially I reject Respondent's arguments with respect to the argued noncompliance with Local and International constitutional and bylaw provisions. While such compliance is a factor to be considered in merger cases, I do not accept the premise that the constitutional and bylaw provisions governing election of union officers must apply to and control an election respecting the merger of locals. I do not view the fact that the instant balloting also involved the approval of a list of surviving union officials after a consummated merger transmuted the merger vote into a vote for the election of officers. I note that the identified officers of the merged local simply carry their titles and terms of office over from the premerger locals. Accordingly, I do not find the constitutional and bylaw procedures advanced as controlling by Respondent are necessarily applicable. Therefore the issue of whether or not the merger procedures were in conformity with those provisions is immaterial to a determination of the due process issue herein and I so find.

Second, based on the cases cited by the General Counsel and the general admonition of the Board in this area that Board election standards are not to be applied to merger elections, but rather only minimal due process requirements imposed, I do not view the merger process described in the stipulation as failing that minimum standard. As noted above, the Board holds that the provision of an opportunity for voters to cast a ballot in secret is enough to meet minimum standards. The remaining aspects of the merger notification, meeting and voting process described in the stipulation are well within the requirements of the Board and courts.

Having considered Respondent's arguments in this regard in light of the stipulated facts and the cases cited, I find that the election procedures met the Board's minimum due process standards. Accordingly, I shall not find the merger invalid on that ground.

d. *Conclusion regarding merger*

Having rejected all attacks on the merger, I find it valid. I further find that Local 1036 is the valid successor to Local 899 for all purposes relevant to this proceeding. More particularly, I find that Local 1036 succeeded to all rights of Local 899, including the rights and obligations created by the Regional Director's issuance of a certification of representative status on May 19, 1987. I find that on May 19, 1987, Local 1036 became the exclusive representative for purposes of collective bargaining of Respondent's unit employees.

C. *Summary and Conclusion*

I have found above that Local 1036 was the successor to Local 899 at the time of their merger on or about December 10, 1986. Local 899 was certified as exclusive representative of Respondent's unit employees on May 19, 1987. I have found Local 1036 became the exclusive representative of Respondent's unit employees on May 19, 1987, and remains so to date. Respondent therefore has an obligation to recognize, meet and bargain with Local 1036 as the exclusive representative of unit employees for purpose of collective bargaining.

On June 2, 1987, and at various times thereafter as set forth, supra, Local 1036 has demanded of Respondent recognition, bargaining and the information described supra. At all relevant times Respondent has refused to recognize Local 1036 as the representative of its unit employees, has refused to meet and bargain with Local 1036 concerning terms and conditions of employment of unit employees and has failed and refused to supply the information requested. Such refusals in the face of Respondent's continuing bargaining obligations constitute continuing violations of Section 8(a)(5) and (1) of the Act and I so find. Accordingly, I shall sustain the allegations of the complaint in their entirety.

REMEDY

Having found Respondent engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action to effectuate the purposes and policies of the Act. The General Counsel in his complaint and on brief seeks all just and

proper relief including an order directing Respondent to recognize and bargain with Local 1036 and to supply the requested information. Such conventional relief shall be granted.

I shall also follow the dictates of *Action Automotive*, 284 NLRB 251 (1987), and construe the certification year which commenced on June 1, 1987, in Case 31–RC–5867 to apply to Local 1036. The certification year shall commence on the date that Respondent begins to bargain in good faith with Local 1036. See also *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965). I shall also recommend the Board formally amend the certification in Case 31–RC–5862 to substitute Local 1036 for Local 899.

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Locals 899, 137, and 1036 have been at relevant times labor organizations within the meaning of Section 2(5) of the Act.

3. At all times since May 19, 1987 Local 1036 has been the exclusive representative for purposes of collective bargaining of Respondent's employees in the following unit:

> All regular full-time and regular part-time employees employed at [Respondent's facilities in] Santa Barbara, California including office clericals, kennel persons, veterinary assistants, educators, maintenance persons, and state humane officers; excluding guards and supervisors as defined in the National Labor Relations Act, confidential employees and licensed doctors of veterinary medicine.

4. Commencing on or about June 2, 1987, and continuing to date Respondent has violated Section 8(a)(5) and (1) of the Act by failing and refusing to:

(a) Recognize Local 1036 as the exclusive representative of its unit employees for purposes of collective bargaining.

(b) Meet and bargain with Local 1036 concerning terms and conditions of employment of unit employees.

(c) Supply Local 1036 with the following written information relevant and necessary for its performance of its duties as representative of unit employees:

> 1) List of current employees in the unit.
> 2) Present job classification of each person listed.
> 3) Present salary or wage level of each person listed.
> 4) Length of service of each person listed.
> 5) Complete mailing address of each person listed.
> 6) Benefit plan description of any existing medical, dental, vision care, prescription or similar benefits.
> 7) Current employee handbook or similar document(s) which delineate work rules, policies, benefits, etc.

5. The above unfair labor practices constitute unfair labor practices effecting commerce within the meaning of Section 2(6) and (7) of the Act.

Based on the above findings of fact and conclusions of law and on the basis of the entire record herein, I issue the following recommended[9]

ORDER

I. ORDER DIRECTED TO RESPONDENT

The Respondent, Santa Barbara Humane Society for the Prevention of Cruelty to Animals, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to recognize Local 1036 as the exclusive representative of Respondent's employees in the following unit:

> All regular full-time and regular part-time employees employed at [Respondent's facilities in] Santa Barbara, California including office clericals, kennel persons, veterinary assistants, educators, maintenance persons, and state humane officers; excluding guards and supervisors as defined in the National Labor Relations Act, confidential employees and licensed doctors of veterinary medicine.

(b) Failing and refusing to meet and bargain with Local 1036 concerning terms and conditions of employment for the employees in the above described unit.

(c) Failing and refusing to furnish Local 1036 with the following requested information relevant and necessary for Local 1036 to perform its duties as representative of employees in the unit described above:

> 1) List of current employees in the unit.
> 2) Present job classification of each person listed.
> 3) Present salary or wage level of each person listed.
> 4) Length of service of each person listed.
> 5) Complete mailing address of each person listed.
> 6) Benefit plan description of any existing medical, dental, vision care, prescription or similar benefits.
> 7) Current employee handbook or similar document(s) which delineate work rules, policies, benefits, etc.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Recognize Local 1036 as the exclusive representative for purposes of collective bargaining of Respondent's employees in the following unit:

> All regular full-time and regular part-time employees employed at [Respondent's facilities in] Santa Barbara, California including office clericals, kennel persons, veterinary assistants, educators, maintenance persons, and state humane officers; excluding guards and supervisors as defined in the National Labor Relations Act,

[9] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

confidential employees and licensed doctors of veterinary medicine.

(b) Upon request, meet and bargain with Local 1036 as the exclusive representative of unit employees concerning terms and conditions of employment and, if an agreement is reached, sign such agreement.

(c) Furnish the following requested information in writing to Local 1036:

1) List of current employees in the unit.
2) Present job classification of each person listed.
3) Present salary or wage level of each person listed.
4) Length of service of each person listed.
5) Complete mailing address of each person listed.
6) Benefit plan description of any existing medical, dental, vision care, prescription or similar benefits.
7) Current employee handbook or similar document(s) which delineate work rules, policies, benefits, etc.

(d) Post at its Santa Barbara, California facility copies of the attached Notice marked ''Appendix.''[10] Copies of the notice, on forms provided by the Regional Director for Region 31, in English and such other languages as the Regional Director determines are necessary to fully communicate with employees, after being signed by Respondent's authorized representative, shall be posted for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to ensure the notices are not altered, defaced, or covered by other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

II. ORDER RESPECTING REPRESENTATION CASE 31–RC–5867

(a) The Certification of Representative in Case 31–RC–5867 issued by the Regional Director of Region 31 of the National Labor Relations Board on May 19, 1987, shall be, and it hereby is amended to substitute Local 1036 for Local 899 as follows:

IT IS HEREBY CERTIFIED that United Food and Commercial Workers Union, Local 1036 is the exclusive representative of all employees of Santa Barbara Humane Society for the Prevention of Cruelty to Animals in the unit described below within the meaning of Section 9(a) of the National Labor Relations Act:

> All regular full-time and regular part-time employees employed at [Respondent's facilities in] Santa Barbara, California including office clericals, kennel persons, veterinary assistants, educators, maintenance persons, and state humane officers; excluding guards and supervisors as defined in the National Labor Relations Act, confidential employees and licensed doctors of veterinary medicine.

(b) The effective date of the certification of representative set forth above for purposes of calculation of the certification year shall begin when Respondent unconditionally recognizes and commences bargaining in good faith with Local 1036 as exclusive representative of unit employees as required under the terms of this Order.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has determined that we have violated the National Labor Relations Act and has ordered us to post this notice and to abide by its terms.

In 1986 a majority of our employees in the collective-bargaining unit described below designated Local 899, United Food and Commercial Workers Union as their exclusive representative of collective bargaining. Subsequently, the National Labor Relations Board certified Local 899 as the exclusive representative of those employees.

In 1986 Local 899 merged with Local 137 of the United Food and Commercial Workers Union to form a new local, United Food and Commercial Workers Union, Local 1036. As a result of this merger, Local 1036 has been and is now the exclusive representative of our unit employees for purposes of collective bargaining.

We give our employees the following assurances:

WE WILL NOT fail and refuse to recognize Local 1036 as the exclusive representative of our employees in the bargaining unit described below.

WE WILL NOT refuse to meet and bargain with Local 1036 concerning terms and conditions of employment of unit employees and, if and agreement is reached, WE WILL NOT refuse to sign such an agreement.

WE WILL NOT fail and refuse to supply Local 1036 with information requested by it which is necessary to Local 1036 to fulfill its duties as exclusive representative of unit employees for purposes of collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them in Section 7 of the National Labor Relations Act.

WE WILL recognize Local 1036 as the exclusive representative of our unit employees.

WE WILL upon request meet and bargain with Local 1036 concerning terms and conditions of employment for unit employees and, if agreement is reached, WE WILL reduce it to writing and sign such an agreement.

WE WILL supply Local 1036 with the following information in writing which has been requested by and is necessary to Local 1036 so that it may fulfill its duties as exclusive representative of unit employees for purposes of collective bargaining:

1) List of current employees in the unit.
2) Present job classification of each person listed.

[10] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

3) Present salary or wage level of each person listed.

4) Length of service of each person listed.

5) Complete mailing address of each person listed.

6) Benefit plan description of any existing medical, dental, vision care, prescription or similar benefits.

7) Current employee handbook or similar document(s) which delineate work rules, policies, benefits, etc.

The collective-bargaining unit represented by Local 1036 is:

All regular full-time and regular part-time employees employed at Santa Barbara Humane Society for the Prevention of Cruelty to Animal's facilities in Santa Barbara, California including office clericals, kennel persons, veterinary assistants, educators, maintenance persons, and state humane officers; excluding guards and supervisors as defined in the National Labor Relations Act, confidential employees and licensed doctors of veterinary medicine.

SANTA BARBARA HUMANE SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS